

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	CASE NO. 8:09CR81
)	
vs.)	
)	MEMORANDUM AND ORDER
CHAD WINTERS,)	
)	
Defendant.)	

This matter is before the Court on the Defendant's successive motion brought under 28 U.S.C. § 2255 (Filing No. 314). The Court denied his previous motion brought under 28 U.S.C. § 2255. This Court and the Eighth Circuit Court of Appeals denied the Defendant's request for a certificate of appealability. A Rule 60(b)(4) motion followed, in which the Defendant sought to relitigate the issues raised in his § 2255 motion, and that motion also was denied.

Winters seeks to relitigate his § 2255 motion asserting that the recent U.S. Supreme Court decision in *Alleyne v. United States*, 133 S. Ct. 2151 (2013), is applicable to his case. Winters pled guilty to Counts I, II, and V of the Superseding Indictment charging him with: conspiracy to distribute and possess with intent to distribute a mixture or substance containing a detectable amount of methamphetamine and a mixture or substance containing a detectable amount of cocaine (Count I); using and carrying a firearm during and in relation to the crime charged in Count I (Count II); and criminal forfeiture (Count V). No direct appeal was filed. Before he entered his plea, Winters was advised of the elements of the offenses and the potential penalties, including applicable mandatory minimum terms and the fact that his term of incarceration on Count II would run consecutive to his term on Count I. Winters entered into an 11(c)(1)(C) plea agreement,

and was sentenced in accordance with that agreement, receiving the mandatory minimum terms for both Counts I and II.

A Defendant may not relitigate a § 2255 motion in a successive motion filed without the Eighth Circuit's approval. *United States v. Patton*, 309 F.3d 1093, 1094 (8th Cir. 2002).

IT IS ORDERED:

1. The Defendant's motion filed under Federal Rule of Civil Procedure 60(b)(4) (Filing No. 314) is denied; and
2. The Clerk is directed to mail a copy of this Memorandum and Order to the Defendant at his last known address.

DATED this 3rd day of July, 2013.

BY THE COURT:

s/Laurie Smith Camp
Chief United States District Judge